

Dear sir or madame:

I am writing this brief comment in response to the FCC's current consideration of broadcast flag requirements for digital TV. It is my contention that such requirements are unnecessary, ineffectual, and ultimately a slap in the face to the manufacturers who would have to implement the flag hardware at their own cost, as well as consumers who should not have their fair use rights to store archival copies of broadcast content (as established in the Betamax precedent) discarded for the simple purpose of expedience.

As I understand it, the entertainment industry has portrayed the broadcast flag as a necessary step to content availability and thus the adoption of digital TV. They have asserted that a non-flag-protected standard is unsafe, and therefore they will withhold their content until it is implemented.

This is a fair assertion, except for a great number of problems with this tactic. First, we must take note of the fact that a broadcast flag conveniently places all the cost impetus of protection on everyone except the entertainment industry. The cost is incurred by the technology industry, which has to develop their flag hardware and implement it into their DTV sets. The technology industry, which it must be noted is as much as 10 times the economic size of the entertainment industry, runs an enormous risk of backlash and slow adoption if a flag is implemented. This is because consumers who will inevitably bear the passed-down cost of flag implementation now find that instead of buying a piece of open and modifiable technology, they are now buying a more expensive, less useable consumption platform, which can now dictate when and how they view their programming to an alarming and unnecessary degree.

Adding to this, as a necessity for DTV broadcast flags to function, non-flagged sets are now unsupported by DTV broadcasts. The loss of significant non-infringing uses (as mentioned earlier) is only multiplied, as unlocked technology that would then be infringing by its very existence is regulated out of accepted use.

Finally, the 'potential problem of piracy' that this flag would supposedly solve is made moot by the fact that only one person needs to break this protection, record a show, and upload it to the internet in unencrypted form in order to begin its dissemination. After that, the cat is out of the bag, so to speak, and all the protection in the world, broadcast flag or not, will affect the recording's distribution.

In summary, this requirement for a broadcast flag is a misplaced, misconceived, ineffectual attempt to control the DTV environment, at the expense of a technology industry. The losses for the technology industry and for consumer fair use will be great, and they will be incurred for small gains by disproportionately influential entertainment interests.

Sincerely,

Henry Behnen